

DISTRIBUTION SYSTEMS REGULATED BY THE STATE ENGINEER

Meeting with the Blacksmith's Fork Water Users

February 11, 2003

WHAT IS THE DEFINITION OF "WATER USER" FOR DISTRIBUTION SYSTEMS REGULATED BY THE STATE ENGINEER.

A water user is an individual or a company who owns a water right. For the purposes of administering a distribution system, a shareholder in a company is not recognized as a water user. This is because the State Engineer has records of water right owners but does not have records concerning shareholders in a company.

Only water users (water right owners) are allowed to vote in issues relating to the administration of the distribution system. Shareholders have a voice in the administration of the system through the representation of the president of the company.

Distribution system notices, assessments etc. sent only to water users.

WHAT IS THE STATE ENGINEER'S STATUTORY AUTHORITY AND RESPONSIBILITY REGARDING THE DISTRIBUTION OF WATER?

Section 73-5-1 of the Utah Code Annotated, 1953, as amended, states in part:

If in the judgment of the state engineer or the district court, it is necessary to appoint a water commissioner for the distribution of water from any river system or water source, the commissioner shall be appointed by the state engineer for a four-year term by the state engineer.

The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, and if only a part is to be served, the state engineer shall determine the boundaries of that part.

Section 73-5-3, U.C.A. states in part:

The state engineer shall divide or cause to be divided, the water within any district created under the provisions of this title among the several appropriators entitled thereto in accordance with the right of each respectively

HOW ARE STATE ENGINEER-ADMINISTERED SYSTEMS ORGANIZED?

Statute mandates that the state engineer consult with the water users concerning who should be appointed as commissioner, what his duties should be, and what his compensation should be. If the majority of the water users agree concerning those items, the state engineer is to act accordingly.

This consultation is done each year during an annual meeting between the water users and the state engineer's staff. Some distribution systems are small enough that the meeting involves all of the water users and all vote on the issues listed above. In the case of large systems with many water users or where there are a number of irrigation or canal companies, a committee is organized to represent the water users in these decisions.

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A chairman is appointed who becomes the main contact between the state engineer and the water users.

Water commissioners are appointed for a term of four years. The commissioner may be removed from office by the state engineer for cause. Water user concerns regarding the commissioner which are brought up during the annual meeting or during the irrigation season will be investigated by the state engineer.

On distribution systems where the workload warrants it, the water users or water user committee may determine that a deputy commissioner is needed. A deputy commissioner is not appointed by the state engineer but is hired by the water commissioner as authorized by the water users.

WHAT IS THE NATURE OF THE RELATIONSHIPS THAT EXIST IN A STATE ENGINEER ADMINISTERED DISTRIBUTION SYSTEM?

The state engineer and the commissioner

The state engineer supervises commissioner and gives direction and instruction concerning the regulation of water according to water rights.

The state engineer provides technical and administrative assistance as needed.

The commissioner submits an annual report concerning water distribution to the state engineer

The commissioner is backed up by full authority of the state engineer's office and is defended if need be by the Attorney General's Office in matters related to the distribution of water.

The water commissioner supervises the activity of the deputy commissioner and is responsible to the state engineer for the work done by the deputy.

The state engineer and the water users or water user committee

State engineer consults with water users on administrative issues concerning the distribution system

State Engineer coordinates with water users on the implementation of procedures or policy relating to the regulation of water on ~~the~~ Creek

The state engineer and the court

State engineer abides by and bases water regulation and distribution on any pertinent court decisions.

At time, the State engineer will petition the court for assistance in the enforcement of a state engineer order

HOW ARE WATER REGULATION AND DISTRIBUTION DECISIONS HANDLED?

Distribution decisions made by the state engineer are based on water rights of record as approved by the state engineer's office or decreed by the court

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The state engineer gives the commissioner the guidelines for distribution and the commissioner makes the day to day decisions on how to distribute water to stay within those guidelines and to keep distribution according to water rights.

However, upon stipulation by all water users the distribution of water may be modified to correspond to the needs or particular circumstances of the water users.

WHAT ARE THE COSTS ASSOCIATED WITH A STATE ENGINEER ADMINISTERED DISTRIBUTION SYSTEM?

Payroll expenses - state engineer appointed water commissioners are paid through the state payroll system. In addition to commissioner salary the following payroll expenses are required by the state and must be paid by the distribution system:

- Workers compensation
- Unemployment compensation
- Long term disability insurance
- Social security

The total of these additional expenses is 8.89% of salary

State retirement system - water commissioners are eligible to participate in the state retirement system if the commissioner's annual salary is \$9000 or more. The cost of the retirement is 11.90% of salary which is paid by the distribution system. If eligible, commissioners may choose to not participate in the retirement system.

State employee health insurance is available to commissioners but is optional. The employer's portion of the insurance cost is paid by the distribution system.

The state engineer makes an assessment to each distribution system to help defray the costs of maintaining the assessment accounts, preparing and collecting assessments, disbursing and accounting for system funds, and preparing financial reports. The assessment will be 5.2% of the system budget during the 2003 year and 7.8% of the budget in 2004 and during following years.

Other expenses added to system budgets by water users as the need arises include: commissioner travel expenses, deputy salary and payroll expenses, office expenses, committee expenses, etc.

HOW ARE ASSESSMENTS MADE AND COLLECTED

The budget and the total assessment for the system are set by the water users or the committee at the annual distribution meeting.

Assessments to individual water users are based on water rights - either according to the amount of water delivered during the previous year or according to the water delivery allowed by the water right. The method of assessing the individual water users is developed by the state engineer in consultation with the water users.

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Assessment notices are mailed by the state engineer shortly after the annual distribution meeting. Assessments are considered to be delinquent if they are not paid by June 1st. A 10% penalty is added to all delinquent accounts and delinquent notices are sent to each delinquent water user.

If a water user is delinquent in payment for two years, the state engineer starts a collection process. A warning letter is sent to the water user explaining the nature of the delinquency and the consequences for non-payment. If the water user does not pay the delinquent amount by the deadline, the state engineer issues an order to cease the use of water and instructs commissioner to close and lock the head gate. If necessary, the state engineer will follow up with legal action in court.

HOW ARE SYSTEM FUNDS DISBURSED AND ACCOUNTED FOR?

Commissioners and deputies are paid through state payroll system. Other distribution system expenses are paid directly from the state engineer's office upon receipt of a reimbursement request voucher from the commissioner. Annual financial reports are prepared by the state engineer's staff and presented at the annual distribution meetings. The financial records kept by the state engineer's staff for each distribution system are subject to periodic review by state auditors.

WHAT STEPS WILL BE TAKEN IF THE DECISION IS MADE TO ORGANIZE A DISTRIBUTION SYSTEM AND APPOINT A WATER COMMISSIONER FOR BLACKSMITH FORK?

Another meeting will be held with the water users to accomplish the following:

- Organize the system according to the needs of the water users and the local situation. The only state requirements are that there be a chairman of the distribution system to conduct the meeting and a secretary to take minutes.

- Determine the recommendation of the water users concerning the appointment of a commissioner

- Establish an operating budget and establish the assessment

An assessment account will be set up for each water user and assessments will be mailed

The distribution system will be inspected by the state engineer's staff and the commissioner to review the adequacy of measuring devices and control structures. Notices will be sent to water users who need to install or improve measuring devices and/or head gates. A deadline will be set stating that the installation or improvements must be made prior to the next irrigation season.

The state engineer will review distribution practices on the system and make adjustments as necessary to ensure compliance with the water rights on the system.